

SERVICE DATE – FEBRUARY 26, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35803

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY—PETITION FOR
DECLARATORY ORDER

Digest:¹ This decision initiates a proceeding to consider whether rules regarding railroad locomotive idling would be preempted by 49 U.S.C. § 10501(b) if the United States Environmental Protection Agency approves the rules as part of California's air quality management plan under the Clean Air Act.

Decided: February 25, 2014

On January 24, 2014, the United States Environmental Protection Agency (EPA), Region IX, filed a petition for declaratory order requesting that the Board institute a proceeding to consider whether two rules concerning railroad locomotive idling issued by the South Coast Air Quality Management District (SCAQMD) would be preempted by 49 U.S.C. § 10501(b), if those rules were approved into the California State Implementation Plan (SIP) under the Clean Air Act, 42 U.S.C. § 7401 et seq.² The EPA indicates that it must decide whether to approve the rules into the California SIP and therefore seeks guidance on whether § 10501(b) would preempt the implementation of the rules if they are approved.

Replies to the EPA's petition were submitted by United States Representative Henry A. Waxman, SCAQMD, CARB, the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP),³ Norfolk Southern Railway Company, the Association of American Railroads, BNSF Railway Company, Union Pacific Railroad Company, East Yard Communities for Environmental Justice, and the Center for Community Action & Environmental Justice and Sierra Club.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, it is

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² SCAQMD submitted the rules to the California Air Resources Board (CARB), which then submitted the rules to the EPA for approval into the California SIP.

³ MassDEP filed a petition to intervene, which will be granted.

appropriate to institute a declaratory order proceeding to remove the uncertainty raised in EPA's petition regarding whether the idling rules, if approved into the California SIP, would be preempted by § 10501(b). The record presented to date reveals that this is a matter of widespread and significant public interest and warrants thorough consideration by the Board after the development of a complete record. The Board will therefore institute a declaratory order proceeding to consider the issues and establish a procedural schedule for the filing of comments and replies.⁴

In its January 24, 2014 filing, the EPA also requested an expedited proceeding due to a statutory deadline of February 28, 2014, for the EPA to take action on CARB's request that the state-developed rules be accepted into the California SIP, which CARB had submitted to the EPA on August 30, 2012. The EPA's proposed schedule, submitted in its petition to the Board, would not provide sufficient time for all interested parties to comment on the preemption issue and for the Board to fully consider the matter. Accordingly, the Board hereby provides notice that issuance of a decision by February 28, 2014, will not be possible.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted.
2. MassDEP's petition to intervene is granted.
3. Interested parties may submit new or supplemental comments by March 28, 2014. Replies to those comments are due by April 14, 2014.
4. Notice of the Board's action will be published in the Federal Register.
5. This decision is effective on its service date.

By the Board, Chairman Elliott and Vice Chairman Begeman.

⁴ Parties that have already replied to the petition need not refile unless they wish to supplement what they have already filed.